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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2009-270**

13 PATRICIA LYNNE MERRILL
14 31724 Loma Linda Road
Temecula, CA 92592

A C C U S A T I O N

15 Registered Nurse License No. RN 502478

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
22 Department of Consumer Affairs.

23 **License History**

24 2. On or about August 19, 1994, the Board of Registered Nursing issued
25 Registered Nurse License Number RN 502478 to Patricia Lynne Merrill (Respondent). The
26 Registered Nurse License expired on August 31, 2008, and has not been renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Business and Professions Code (Code) provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

....

7. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

....

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or

1 the public or to the extent that such use impairs his or her ability to conduct with
2 safety to the public the practice authorized by his or her license.

3 (c) Be convicted of a criminal offense involving the prescription,
4 consumption, or self-administration of any of the substances described in
5 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
6 record pertaining to, the substances described in subdivision (a) of this section, in
7 which event the record of the conviction is conclusive evidence thereof.

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10 8. Section 2765 of the Code states:

11 A plea or verdict of guilty or a conviction following a plea of nolo
12 contendere made to a charge substantially related to the qualifications, functions
13 and duties of a registered nurse is deemed to be a conviction within the meaning
14 of this article. The board may order the license or certificate suspended or
15 revoked, or may decline to issue a license or certificate, when the time for appeal
16 has elapsed, or the judgment of conviction has been affirmed on appeal or when
17 an order granting probation is made suspending the imposition of sentence,
18 irrespective of a subsequent order under the provisions of Section 1203.4 of the
19 Penal Code allowing such person to withdraw his or her plea of guilty and to
20 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
21 accusation, information or indictment.

22 9. Section 490 of the Code provides, in pertinent part, that a board may
23 suspend or revoke a license on the ground that the licensee has been convicted of a crime
24 substantially related to the qualifications, functions, or duties of the business or profession for
25 which the license was issued.

26 10. Section 493 of the Code states:

27 Notwithstanding any other provision of law, in a proceeding conducted by
28 a board within the department pursuant to law to deny an application for a license
or to suspend or revoke a license or otherwise take disciplinary action against a
person who holds a license, upon the ground that the applicant or the licensee has
been convicted of a crime substantially related to the qualifications, functions,
and duties of the licensee in question, the record of conviction of the crime shall
be conclusive evidence of the fact that the conviction occurred, but only of that
fact, and the board may inquire into the circumstances surrounding the
commission of the crime in order to fix the degree of discipline or to determine if
the conviction is substantially related to the qualifications, functions, and duties
of the licensee in question.

As used in this section, "license" includes "certificate," "permit,"
"authority," and "registration."

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1 **REGULATORY PROVISIONS**

2 11. California Code of Regulations, title 16, section 1444, states:

3 A conviction or act shall be considered to be substantially related to the
4 qualifications, functions or duties of a registered nurse if to a substantial degree it
5 evidences the present or potential unfitness of a registered nurse to practice in a
6 manner consistent with the public health, safety, or welfare. Such convictions or
7 acts shall include but not be limited to the following:

8 (a) Assaultive or abusive conduct including, but not limited to, those
9 violations listed in subdivision (d) of Penal Code Section 11160.

10 (b) Failure to comply with any mandatory reporting requirements.

11 (c) Theft, dishonesty, fraud, or deceit.

12 (d) Any conviction or act subject to an order of registration pursuant to
13 Section 290 of the Penal Code.

14 12. California Code of Regulations, title 16, section 1445 states:

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16 (b) When considering the suspension or revocation of a license on the
17 grounds that a registered nurse has been convicted of a crime, the board, in
18 evaluating the rehabilitation of such person and his/her eligibility for a license
19 will consider the following criteria:

20 (1) Nature and severity of the act(s) or offense(s).

21 (2) Total criminal record.

22 (3) The time that has elapsed since commission of the act(s) or
23 offense(s).

24 (4) Whether the licensee has complied with any terms of parole,
25 probation, restitution or any other sanctions lawfully imposed
26 against the licensee.

27 (5) If applicable, evidence of expungement proceedings pursuant to
28 Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

24 **COST RECOVERY**

25 13. Section 125.3 of the Code provides, in pertinent part, that the Board may
26 request the administrative law judge to direct a licentiate found to have committed a violation or
27 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
28 and enforcement of the case.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(January 23, 2006 Criminal Conviction for DUI on August 28, 2005)**

3 14. Respondent has subjected her license to disciplinary action under sections
4 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is
5 substantially related to the qualifications, functions, and duties of a registered nurse. The
6 circumstances are as follows:

7 a. On or about January 23, 2006, in a criminal proceeding entitled
8 *People of the State of California v. Patricia Lynne Merrill*, in Riverside County Superior Court,
9 case number SWM042176, Respondent was convicted on her plea of guilty of violating Vehicle
10 Code section 23152, subdivision (b), driving with a blood alcohol level of .08 or more, a
11 misdemeanor.

12 b. As a result of the conviction, on or about January 23, 2006,
13 Respondent was sentenced to one day in the county jail (with credit for one day), 36 months
14 summary probation, completion of a four-month First Offender DUI Program, and payment of
15 \$1,621.40 in fees, fines, and restitution. Respondent's driver's license was restricted to driving
16 to/from work only for three months. Respondent's probation was revoked and reinstated twice.

17 c. The facts that led to the conviction were that on or about August
18 28, 2005, Respondent drove a motor vehicle while under the influence of alcohol.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(September 3, 2008 Criminal Conviction for DUI on June 27, 2008)**

21 15. Respondent has subjected her license to disciplinary action under sections
22 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is
23 substantially related to the qualifications, functions, and duties of a registered nurse. The
24 circumstances are as follows:

25 a. On or about September 3, 2008, in a criminal proceeding entitled
26 *People of the State of California v. Patricia Lynne Merrill, aka Patricia Lynne Johnson*, in
27 Riverside County Superior Court, case number SWM077519, Respondent was convicted on her
28 plea of guilty of violating Vehicle Code section 23152, subdivision (b), driving with a blood

1 alcohol concentration (BAC) of .08 or more, a misdemeanor, and it was further alleged that
2 Respondent's BAC was 0.15 percent or more, within the meaning of Vehicle Code section
3 23578. The conviction was enhanced by Respondent's prior conviction for the same offense,
4 and that Respondent violated the probation imposed in case no. SWM042176, as detailed in
5 paragraph 15, above. Respondent was further convicted of driving a motor vehicle during a
6 time her license was suspended in violation of Vehicle Code section 14601.1, subdivision (a).

7 b. As a result of the conviction, on or about September 3, 2008,
8 Respondent was sentenced to 40 days in the county jail (with credit for two days, to be served on
9 the RSO Weekender Program), 48 months summary probation (set to expire on September 2,
10 2012), completion of an 18-month SB38 Second Offender Program, and pay \$2,018 in fees,
11 fines, and restitution. Respondent waived the installation of an interlock device because she
12 testified to the court that she no longer owned or operated any motor vehicle.

13 c. The facts that led to the conviction were that on or about the
14 evening of June 27, 2008, a Riverside County Deputy Sheriff was dispatched to a hit and run
15 traffic collision and met the victim outside a Temecula convenience store. The victim reported
16 he was driving down the road at approximately 40 mph when Respondent, who was driving a
17 Toyota Tundra registered to one of the passengers, passed his vehicle on the left and side-swiped
18 his Cadillac. Respondent did not stop or slow down. The victim followed Respondent's vehicle
19 until she turned into the convenience store parking lot and parked. The victim contacted
20 Respondent and she denied she hit his vehicle. Respondent appeared to be intoxicated, so the
21 victim notified law enforcement using his OnStar telephone. The deputy drove to where
22 Respondent had parked her vehicle; she was backing out of the stall as he approached, but
23 stopped when she saw his marked police car. The deputy contacted Respondent and observed
24 her eyes were red and watery, her speech was slurred, and he could smell the odor of alcohol
25 coming from her vehicle. The deputy had Respondent exit her vehicle. As the deputy spoke to
26 Respondent he could smell a moderate odor of alcohol on her breath and she was unsteady on
27 her feet. Respondent was not able to successfully complete any of the field sobriety tests as
28 explained and demonstrated. Respondent submitted to two preliminary alcohol screening (PAS)

1 tests; the resulting BAC readings were 0.150% and 0.151%. Respondent was placed under arrest
2 for driving under the influence of alcohol. Respondent submitted to a breath test which resulted
3 in BAC readings of 0.17% and 0.16%.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Use of Alcohol in a Dangerous Manner)**

6 16. Respondent has subjected her license to disciplinary action under sections
7 2761, subdivision (a) and 2762, subdivision (b) of the Code in that on or about August 28, 2005
8 and June 27, 2008, as detailed in paragraphs 14 and 15, above, Respondent used alcoholic
9 beverages to an extent or in a manner dangerous or injurious to herself and the public, which
10 constitutes unprofessional conduct.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Conviction of Alcohol-Related Criminal Offenses)**

13 17. Respondent has subjected her license to disciplinary action under sections
14 2761, subdivision (a), and 2762, subdivision (c) of the Code in that on or about January 23, 2006
15 and September 3, 2008, as detailed in paragraphs 14 and 15, above Respondent was convicted of
16 criminal offenses involving the consumption and/or self-administration of alcohol, which
17 constitutes unprofessional conduct.

18 **FACTORS IN AGGRAVATION**

19 18. To determine the degree of discipline, if any, to be imposed on
20 Respondent, Complainant alleges:

21 a. On or about July 19, 2006, in a prior criminal proceeding entitled
22 *People of the State of California v. Patricia Lynne Merrill*, in San Bernardino County Superior
23 Court, case number MBV26236, Respondent was convicted on her plea of guilty for violating
24 Penal Code section M647, subdivision (f), public intoxication, an infraction, and was fined
25 \$124.00. The circumstance that led to the conviction was that Respondent was cited by the San
26 Bernardino County Sheriff's Department for being drunk in public on March 26, 2006 at Big
27 Bear Lake. Following Respondent's failure to pay the \$124.00 by the due date, a bench order
28 was issued on September 15, 2006 and remains in effect.

1 b. In a letter to Respondent dated September 18, 2006, the Board
2 acknowledged Respondent's July 19, 2006 conviction and stated that although the violation did
3 not reach a level that would justify the imposition of discipline on Respondent's registered nurse
4 license, the complaint would be maintained on file for future reference.

5 19. To determine the degree of discipline, if any, to be imposed on
6 Respondent, Complainant alleges that on or about December 29, 2008, in a criminal proceeding
7 entitled *People of the State of California v. Patricia Lynne Merrill*, in Riverside County Superior
8 Court, case number SWM080404, Respondent was convicted on her plea of guilty for violating
9 Vehicle Code section 14601.1, subdivision (a), operating a motor vehicle on November 3, 2008,
10 with the knowledge that her driver's license was suspended, a misdemeanor. As a result of the
11 conviction, Respondent was sentenced to 36 months summary probation, and payment of
12 \$1,189.00 in fees, fines, and restitution.

13 20. Respondent's demonstrated unwillingness to comply with the terms of
14 probation indicates contempt of the court's jurisdiction and a disregard for the safety of herself
15 and the public.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number RN 502478 issued to Patricia Lynne Merrill;
2. Ordering Patricia Lynne Merrill to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 4/28/09


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SD2009803627